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The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

BARBARO ROSAS and GUADALUPE TAPIA, as individuals and on behalf of all other similarly situated persons,

## CLASS ACTION

Civil Action No. 2:18-CV-0112-JCC

Plaintiffs,  
vs.

PLAINTIFF'S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT

SARBANAND FARMS, LLC, MUNGER  
BROS., LLC., NIDIA PEREZ, and CSI VISA  
PROCESSING S.C..

NOTED FOR CONSIDERATION:  
December 23, 2019

## Defendants.

## I. INTRODUCTION AND RELIEF REQUESTED

The parties have reached an arms-length settlement and seek preliminary approval from this Court pursuant to Federal Rule of Civil Procedure 23(e). Defendants' counsel have reviewed this motion and confirm that the Defendants do not oppose.

## II. PROCEDURAL BACKGROUND & TERMS OF SETTLEMENT

The procedural background is well known to the Court, is set forth in detail in the attached proposed Settlement Agreement and will not be repeated here. Settlement Agreement ¶¶ 1-14. However, it is important to note that this Settlement was reached only after two full-day

PLAINTIFF'S UNOPPOSED MOTION FOR  
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1 mediations, with the assistance of a highly skilled and respected mediator, and months of  
 2 intervening negotiations and continuing litigation. The following summarizes the Settlement  
 3 Agreement's salient terms.

4 **A. Summary of Settlement Terms.**

5 In consideration for settlement and a release of all of the Class claims according to the  
 6 terms included in the Settlement Agreement, Defendants agree to create a settlement fund  
 7 totaling \$3,750,000 to be distributed as detailed below. *Settlement Agreement ¶ 19 (a-d)*. Under  
 8 the Settlement Agreement, the Parties propose that nearly 80% of those funds, or \$2,962,500, be  
 9 distributed to class members and the remaining funds be allocated for statutory attorney fees and  
 10 costs.

11 1. Proposed Class and Subclass Payments.

12 The Court certified a 2017 Blueberry Harvester Class<sup>1</sup> and a Wrongful Termination  
 13 Subclass. [Dkt. No. 74](#) at 26-27. Of the \$2,962,500 earmarked for class members, the Parties  
 14 propose that \$2,287,500 be allocated equally amongst all 519 members of the 2017 Blueberry  
 15 Harvester Class who make a valid claim.<sup>2</sup> Those monies would compensate them for all claims  
 16 certified by the Court. *Settlement Agreement ¶ 19(a)*. The Parties also request that the Court  
 17 award a service award of \$10,000 for each class representative out of these funds. *Id.*

18  
 19  
 20 <sup>1</sup> This Court also certified a "2017 Blueberry Harvester Class-Defendant Perez Subclass" in light of Plaintiffs'  
 21 assertion of identical FFLCA claims against Defendants Nidia Perez and CSI. [Dkt. No. 74](#) at 8-9, 27. The proposed  
 22 Settlement resolves all FFLCA statutory damage claims on behalf of all 519 Class Members on an equal basis  
 23 regardless of whether they were recruited by Defendant Perez or Defendant CSI. Therefore, there is no need to  
 allocate separate FFLCA damage awards to the Defendant Perez Subclass as all Class Members will be compensated  
 for those damages in the proposed award to the 2017 Blueberry Harvester Class.

<sup>2</sup> A total of 91 class members filed opt-out forms during the class notification period and will not be eligible to make  
 claims under the Settlement. [Dkt. No. 111](#) at 1.

1 For the Wrongful Termination Subclass, the Parties propose that \$675,000 be divided  
2 equally among all 65 members who make a valid claim. Those monies would compensate the  
3 Subclass Members for all claims certified by the Court. *Id.* ¶ 19(c).

4 There shall not be any reversion of funds to the Defendants. *Id.* ¶ 19(f). Defendants may  
5 object to a claim submitted by an individual not on the Class Member list according to the terms  
6 of the Settlement Agreement. *Id.* ¶ 24.

7 2. Attorney Fees and Costs.

8 Defendants will not object to, and agree to pay, Plaintiffs' fee petition seeking Court  
9 approval for \$787,500 to Class Counsel for attorneys' fees and costs pursuant to the fee-shifting  
10 statutes applicable to Plaintiffs' claims: 18 U.S.C. §1595(a), RCW 49.60.030(2), and RCW  
11 19.30.170(1). This payment represents 21% of the total settlement fund and will compensate and  
12 reimburse Plaintiffs' counsel for work already performed and for all work remaining to be  
13 performed to document the settlement, secure Court approval of the settlement, and ensure that  
14 the settlement is fairly administered and implemented. *Morrison Decl.* ¶ 15. To the extent the  
15 Court approves a fee and cost award of less than \$785,500, the amount paid to Class Counsel as  
16 fees and costs will be the amount approved by the Court and any remainder shall be added to the  
17 sum for distribution to the Class Members. Plaintiffs have filed a fee petition along with this  
18 motion, which will be available for review by class members who wish to comment on the  
19 proposed fee award.

20 3. Additional Terms.

21 Defendant CSI Visa Processing further agrees to the following injunctive relief to ensure  
22 future compliance with the rights of Class Members and other H-2A farm workers seeking  
23 employment in the United States. *Settlement Agreement* ¶ 20(a-d). CSI's president has agreed to

1 write a letter that can be distributed to class members stating there will be no adverse  
2 consequences from their participation in the lawsuit, explaining the current process for applying  
3 for work, and setting up an alternative dispute process to ensure class members who believe they  
4 have been unfairly denied employment through CSI in 2020. *Id.* CSI has further agreed to  
5 provide a report to Columbia Legal Services no later than August 31, 2020 of all positions  
6 offered to and accepted by each worker. *Id.* at ¶ 19(e). The Court shall have the ability to provide  
7 additional relief should CSI fail to comply with these obligations, including, but not limited to,  
8 statutory damages to any worker who did not receive an offer of H-2A employment in 2020. *Id.*  
9 at ¶ 21.

10 **B. Administration of Settlement and Notice**

11 Class Counsel, Columbia Legal Services, will issue notice, administer the claims process,  
12 and process payment to Class Members who make a valid claim. *Settlement Agreement* ¶ 23(a).  
13 Any Class Member who wishes to object to the Settlement will have the right to file a written  
14 statement with the Court and appear at the final fairness hearing. *Settlement Agreement* ¶ 24.

15 Plaintiffs will issue a Spanish language notice directly to Settlement Class Members by  
16 WhatsApp or electronic mail that informs members of the Settlement Agreement and their rights  
17 under it. *Settlement Agreement* ¶ 23(a); see Exhibits 1 and 2 (English version of Class Notice  
18 and text/WhatsApp notice). Class members will be allowed to submit a valid claim by  
19 responding affirmatively to the above messages by text message, WhatsApp, or phone call. *Id.*

20 **III. Argument and Authority**

21 **A. Standard for Preliminary Review of Class Action Settlement.**

22 Federal Rule of Civil Procedure 23(e) requires the district court to approve any settlement  
23 of a certified class before such a settlement becomes final. Fed. R. Civ. P. 23(e). Approval under

1 Rule 23(e) involves a two-step process in which the Court first determines whether a proposed  
 2 class action settlement deserves preliminary approval and then, after notice is given to class  
 3 members, whether final approval is warranted.

4       Where the class has already been certified, preliminary approval requires the court to  
 5 ratify the fairness of the settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In  
 6 making this determination, the “court must carefully consider whether a proposed settlement is  
 7 fundamentally fair, adequate, and reasonable, recognizing that it is the settlement taken as a  
 8 whole, rather than the individual component parts, that must be examined for overall fairness.”

9 *Id.* (internal quotation marks and alterations omitted).

10 **B. The Criteria for Settlement Approval Are Satisfied in this Case.**

11 To assess the fairness of settlement, the court looks to the following eight factors:

12 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely  
 13 duration of further litigation; (3) the risk of maintaining class action status  
 14 throughout the trial; (4) the amount offered in settlement; (5) the extent of  
 15 discovery completed and the stage of the proceedings; (6) the experience and  
 16 view of counsel; (7) the presence of a governmental participant; and (8) the  
 17 reaction of the class members of the proposed settlement.

18       *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting  
 19 *Churchill Village, L.L.C., v. General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). In addition, “the  
 20 settlement may not be the product of collusion among the negotiating parties.” *Churchill Village*,  
 21 361 F.3d at 576.

22       1. The Strength of Plaintiffs' Case.

23       Plaintiffs submit that their claims are strong. This Court certified the claims as a Rule  
 24 23(b)(3) class action, denied Defendant Perez's motion to dismiss, and awarded Plaintiffs  
 25 summary judgment with respect to three FFLCA claims for class members sent directly to  
 26 Washington from Mexico. *See generally*, Dkt. Nos. [74](#), [34](#), and [134](#). Legal and factual disputes  
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1 related to the merits of Plaintiffs' TVPA, WLAD, contract, and remaining FLCA claims would  
2 be resolved at trial. Defendants posited legal and factual defenses to all of Plaintiffs' claims.

3     2. Risk and Expense of Continued Litigation.

4         A jury trial was set to begin April 20, 2020. [Dkt. No. 115](#) at 1. All parties recognize there  
5 is substantial risk during any jury trial, along with significant expense to prepare for and litigate  
6 such a trial. The parties also recognize that even with a favorable jury verdict, there is also  
7 potential for a lengthy appeal process.

8     3. Risk of Maintaining Class Action Status throughout Trial.

9         Plaintiffs are confident they could maintain class action status through trial and appeal for  
10 all of their claims. However, as this Court noted in its June 13, 2019 Order, the Defendants could  
11 have moved to decertify Plaintiffs' 2017 Blueberry Harvester Class based on the partial  
12 summary judgment ruling. [Dkt. No. 134](#) at 13-14, Fn. 4.

13     4. Amount Offered in Settlement.

14         Defendants have agreed to pay Class Members an aggregate of \$3,750,000. Of that  
15 amount, the Parties propose that \$2,962,500 will be allocated to pay individual settlement awards  
16 to the Class Members for all claims, and that the Court approve \$787,500 for past and future  
17 attorney fees and costs. This represents a recovery of a significant percentage of the damages that  
18 would be sought at trial.

19         The 2017 Blueberry Harvester Class Members have FLCA, TVPA, and WLAD claims  
20 along with companion contract claims. Meanwhile, the Wrongful Termination subclass have  
21 additional claims for Growers' alleged wrongful termination and unlawful eviction. There are  
22 519 class members in the 2017 Blueberry Harvester Class, and 65 members of the Wrongful  
23 Termination subclass. *See Settlement Agreement ¶ 10, Exhibit A (Class List).*

1       Turning first to the 2017 Blueberry Harvester Class claims, Plaintiffs sought statutory  
 2 damages for the class under FFLCA. Dkt. No. 1 at 84. Per the statute, damages of \$500 per  
 3 person, per violation are required if violations are found. *See Wash. Rev. Code §19.30.170(2);*  
 4 *Perez-Farias v. Glob. Horizons, Inc.*, 286 P.3d 46, 52 (Wash. 2012).

5       For Class Members' TVPA, WLAD and contract claims, Plaintiffs sought actual and  
 6 punitive damages. To this end, Plaintiffs hired two experts to calculate actual damages, including  
 7 economic damages and others. Those experts would testify that Plaintiffs' economic damages  
 8 were at least \$1,150,000. In addition, at trial we would ask the jury to award significant non-  
 9 economic damages for each of the 519 class members.

10       As to the Wrongful Termination Subclass, Plaintiffs sought lost wages owed to the  
 11 subclass, and damages for wrongfully evicting them from housing. In total, the class lost  
 12 approximately \$320,000 in wages, plus non-economic damages in an amount to be determined  
 13 by the jury at trial.

14       Plaintiffs estimate that total damage awards at trial could range between \$3-6 million  
 15 depending on many variable factors. Thus, the proposed settlement amount falls well within the  
 16 range of reasonableness.

17       5. Extent of Discovery Completed and the Stage of the Proceeding.

18       Substantial discovery occurred in this case and the discovery deadline was less than two  
 19 months away at the time the settlement was negotiated. The Court has ruled on several motions,  
 20 and Plaintiffs took nine depositions of key Munger and Sarbanand witnesses involving two trips  
 21 to Fresno, California and one to Portland, Oregon, as well as depositions in Seattle and  
 22 Bellingham. One of the depositions was of Defendant Nidia Perez and another was of Robert  
 23 Hawk, Munger's president. Currently, trial is approximately five months away. The Court has

1 had the ability to review the evidence and make some initial and substantive judgments about the  
 2 strength of the Plaintiffs' case. More importantly, the Parties negotiated this settlement with full  
 3 knowledge of the facts in the case and with substantial information about the strengths and  
 4 weaknesses of their legal positions including rulings in this and other FFLCA cases by this Court,  
 5 the Ninth Circuit, and Washington's State Supreme Court.

6. Experience and Views of Counsel.

7 All counsel involved in this litigation have substantial class action experience as well as  
 8 deep backgrounds in agricultural labor and wage and hour law. Counsel from all firms were  
 9 present during both mediation sessions and all counsel support this settlement as fair and  
 10 reasonable. Due to the nature of this case, the class representatives were not able to participate in-  
 11 person but were available and involved via phone during both mediations.

12 In terms of the proposed service, or incentive awards, Plaintiffs' counsel has significant  
 13 experience with farm workers and the courage it takes to assume such a significant role with  
 14 widespread fear of retaliation in future employment. Courts have discretion to award class action  
 15 incentive payments to compensate a class representative for work performed on behalf of the  
 16 class and for initiating the action. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958  
 17 (9th Cir. 2009). In determining whether to award an incentive payment, courts consider the  
 18 actions undertaken by the class representative to protect class interests, the resulting benefit to  
 19 the class, the time and effort spent to pursue the action, and the reasonable apprehension of  
 20 retaliation. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (citation omitted) (citing  
 21 cases approving incentive awards between \$2,000-\$10,000); *see also Perez-Farias.*, No. CV-05-  
 22 3061-RHW, 2014 WL 1399420, at \*1 (finding \$7,500 incentive payment to domestic farm  
 23 worker class representatives appropriate).

1 Both class representatives merit a significant service award; they risked direct retaliation  
2 for asserting their rights on behalf of the entire class and continue to fear retaliation and  
3 blacklisting in the H-2A hiring process. Both gave full-day depositions in Guadalajara, Mexico  
4 that required them to travel over 4 hours by bus one-way from their homes, as well as miss work  
5 days before and after the depositions due to travel. They participated in both mediations, being  
6 available by phone, and spent countless hours assisting counsel with the investigation, gathering  
7 declarations, arranging and holding meetings in remote areas of Mexico, and regularly being  
8 available for consultations to make case strategy decisions. Subject to approval by the Court,  
9 \$10,000 will be set aside for each. *Settlement Agreement ¶ 19(b)*.

10 **7. Presence of a Government Participant.**

11 No government entities are involved in this lawsuit, nor has the government participated  
12 in any settlement negotiations.

13 **8. The Reaction of the Class Members to the Proposed Settlement.**

14 Both class representatives were present via phone at the mediation and support the  
15 settlement proposal. The Court will be better able to evaluate this prong after notice is provided  
16 to all Class Members.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) grant  
19 preliminary approval of the settlement; (2) approve the proposed notice plan; (3) appoint  
20 Columbia Legal Services as Settlement Administrator; and (4) schedule the final fairness hearing  
21 at the Court's convenience but no earlier than April 20, 2020 to allow for claims and objections  
22 to be made by March 31, 2020 and for Plaintiffs' counsel to prepare and file a final report and  
23 motion.

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1 DATED this 23<sup>rd</sup> day of December, 2019.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 23<sup>rd</sup> day of December, 2019, I electronically filed the  
3 foregoing document with the Clerk of the Court using the CM/ECF system, which will send  
4 notification of such filing to the following:

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21 And I hereby certify that I have mailed by United States Postal Service the document to  
22 the following non-CM/ECF participants: None.

23 

Rachael Pashkowski